

ESTTA Tracking number: **ESTTA733311**

Filing date: **03/14/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	The Coca-Cola Company
Granted to Date of previous extension	03/13/2016
Address	One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES
Attorney information	ANDREA E BATES BATES & BATES LLC 1890 MARIETTA BLVD NW ATLANTA, GA 30318 UNITED STATES abates@bates-bates.com, kschuettinger@bates-bates.com, kdawson@bates-bates.com

Applicant Information

Application No	86445518	Publication date	09/15/2015
Opposition Filing Date	03/14/2016	Opposition Period Ends	03/13/2016
Applicant	Warner Brother Holdings, LLC 688 Minnehaha Avenue Saint Paul, MN 55106 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Bottled artesian water

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2214762	Application Date	02/20/1998
Registration Date	12/29/1998	Foreign Priority Date	NONE
Word Mark	BLUE SKY		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1971/04/00 First Use In Commerce: 1971/04/00 Soft drinks, colas [soft drink] [, concentrates, syrups or powders used in the preparation of soft drinks, essences for use in making soft drinks,] fruit flavored soft drinks, ginger ale, pop [softdrink] [, seltzer water and spring water]

U.S. Registration No.	3053402	Application Date	06/21/2004
Registration Date	01/31/2006	Foreign Priority Date	NONE

Word Mark	BLUE SKY
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 [Fruit juice drinks,] soft drinks, carbonated soft drinks, aerated water, soda water and seltzer water enhanced with vitamins, minerals, nutrients, amino acids and/or herbs

Attachments	78438731#TMSN.png(bytes) Opposition to SKY BLUE WATERS.pdf(63922 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Andrea E. Bates/
Name	ANDREA E BATES

Date	03/14/2016
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE COCA-COLA COMPANY,]	
]	
Opposer,]	
]	Opposition No.:
v.]	
]	
WARNER BROTHER HOLDINGS, LLC]	
]	
Applicant.]	
_____]	

OPPOSITION

THE COCA-COLA COMPANY (“Opposer”), a corporation organized under the laws of Delaware and having a place of business at One Coca-Cola Plaza, Atlanta, Georgia 30313, believes it would be damaged by registration of SKY BLUE WATERS (“Applicant’s Alleged Mark”) to be used with “bottled artesian water” in Class 32 (“Applicant’s Goods”), which mark is the subject of application Serial Number 86/445,518 (the “Application”), filed on November 5, 2014 by Warner Brother Holdings, LLC (the “Applicant”) and published for opposition in the Official Gazette of September 15, 2015.

By and through its undersigned attorneys and in accordance with Rules 2.101 through 2.104 of the Trademark Rules of Practice, Opposer hereby opposes the same.

The grounds for this Opposition are as follows:

1. By the Application, Applicant seeks to register Applicant’s Alleged Mark as a mark for Applicant’s Goods. The Application was filed pursuant to Section 1B of the Lanham Act, based on an intent to use the mark.

2. Opposer is a corporation organized in Delaware engaged in the business of the manufacture and sale of non-alcoholic beverages.

3. Opposer has adopted and used since at least as early as 1971, a number of marks that include BLUE SKY for and in the connection with the promotion, advertising and sale of beverage products.

4. Opposer owns federal trademark registrations for: BLUE SKY (Reg. No. 2,214,762), registered on December 29, 1998 and used with “soft drinks, colas [soft drink], fruit flavored soft drinks, ginger ale, pop [soft drink]” in Class 32; and BLUE SKY (and Design) (Reg. No. 3,053,402), registered on January 31, 2006 and used with “soft drinks, carbonated soft drinks, aerated water, soda water and seltzer water enhanced with vitamins, minerals, nutrients, amino acids and/or herbs” in Class 32 (collectively, “Opposer’s Registrations”).

5. Opposer’s Registrations are incontestable.

6. Opposer’s Registrations are the only marks incorporating “BLUE SKY” that exist on the register and are used with non-alcoholic beverages in Class 32.

7. As a result of the long, widespread, and extensive use by Opposer of Opposer’s Registrations, Opposer’s Registrations are of great value to Opposer in connection with the offering of Opposer’s Goods. Opposer’s Registrations individually serve to identify and distinguish Opposer’s Registrations from the goods, services, and businesses of others; and symbolize the goodwill of Opposer’s business; and are well known.

8. Upon information and belief, Applicant is unable to establish, with respect to Opposer’s use of Opposer’s Registrations, priority of use and/or priority of rights in the United States in connection with Applicant’s Alleged Mark.

9. Upon information and belief, Applicant's Goods and Opposer's Goods are of similar types, are offered or may be offered through the same, substantially the same, and/or related channels of trade, to the same, substantially the same, and/or related classes of purchasers and are or may be advertised, marketed and promoted through the same media channels.

10. Upon information and belief, Applicant's Alleged Mark, when used in connection with Applicant's Goods, so resembles Opposer's Registrations as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's Goods, with respect to Opposer's sponsorship thereof or connection or affiliation therewith, and/or in other ways.

11. Upon information and belief, Applicant's Alleged Mark so closely resembles Opposer's Registrations that potential purchasers of the goods intended to be offered under Applicant's Alleged Mark would be likely to believe that Opposer is the source of such goods, or that Opposer has authorized, sponsored, approved of, or in some other manner associated itself with Applicant's Goods, thereby creating a likelihood of confusion, deception or mistake, all to the damage of Opposer.

12. Opposer would be further damaged by registration of Applicant's Alleged Mark because such registration would constitute prima facie evidence of Applicant's exclusive right to use Applicant's Alleged Mark for and in connection with Applicant's Goods, which would be inconsistent with and detrimental to Opposer's established and superior rights in Opposer's Registrations.

13. Applicant's Alleged Mark falsely suggests a connection or affiliation with Opposer and Applicant is therefore not entitled to registration of Applicant's Alleged Mark.

WHEREFORE, Opposer The Coca-Cola Company respectfully prays that the application of Warner Brother Holdings, LLC, Serial Number 86/445,518, filed November 5, 2014 for registration of the mark SKY BLUE WATERS for Applicant's Goods in International Class 32 be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted, this 14th day of March, 2016.

Bates & Bates, LLC

/Andrea E. Bates/

Andrea E. Bates
1890 Marietta Blvd NW
Atlanta, Georgia 30318
Attorneys for Opposer
The Coca-Cola Company

CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that I have this day served the foregoing Opposition on the Applicant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the Applicant as follows:

GREGORY B. PERLEBERG
VENABLE LLP
2049 Century Park East
Suite 2100
Los Angeles, CALIFORNIA UNITED STATES 90067

This 14th day of March, 2016.

/Andrea E. Bates/

Andrea E. Bates